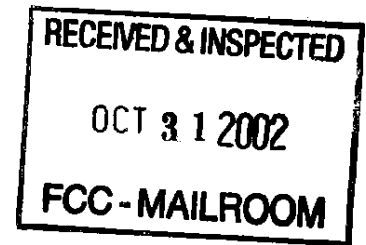


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
Corr Wireless Communications, LLC)
Petition for Designation as an)
Eligible Telecommunications Carrier)

CC Docket No. 96-45

MEMORANDUM OPINION AND ORDER

Adopted: October 29, 2002

Released: October 31, 2002

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition of Corr Wireless Communications, LLC (Corr)' to be designated as an eligible telecommunications carrier (ETC) throughout its licensed service area in the state of Alabama pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ We conclude that Corr, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1).³ Specifically, we conclude that Corr has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. Corr has provided an affirmative statement that the Alabama Public Service Commission (Alabama Commission) lacks the jurisdiction to perform the designation for Corr, and that the Federal Communications Commission (Commission) therefore has authority to perform the requested ETC designation under section 214(e)(6) of the Act.⁴

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal

¹ Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier, filed April 29, 2001. Revised Exhibit 1, filed October 9, 2002 (Corr Petition).

² 47 U.S.C. § 214(e)(6).

³ 47 U.S.C. § 214(e)(1).

⁴ 47 U.S.C. § 214(e)(6).

service support.'" Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.'

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁷ Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."⁸ Under section 214(e)(6), upon request and consistent with the public interest, convenience, and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).⁹

B. Commission Requirements for ETC Designation

4. Filing Requirements for ETC Designation. On December 29, 1997, the Commission released a Public Notice establishing the requisite procedures for carriers seeking Commission designation as an ETC under section 214(e)(6).¹⁰ In the *Section 214(e)(6) Public Notice*, the Commission delegated authority to the Chief of the Wireline Competition Bureau to designate carriers as ETCs pursuant to section 214(e)(6).¹¹ The *Section 214(e)(6) Public Notice* required petitioners to: (1) submit a certification and brief statement of supporting facts demonstrating that the petitioner is "not subject to the jurisdiction of a state commission;" (2) submit a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c); (3) provide a certification that the petitioner offers the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) offer a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution;" and (5) if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service areas for which it requests an ETC designation from the Commission.¹²

⁴ 47 U.S.C. § 254(e).

⁶ 47 U.S.C. § 214(e)(1).

⁷ 47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

⁸ 47 U.S.C. § 214(e)(6). See, e.g., *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001) (*Western Wireless Pine Ridge Order*); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 9589 (Wireline Comp. Bur. 2002).

⁹ 47 U.S.C. § 214(e)(6).

¹⁰ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997) (*Section 214(e)(6) Public Notice*).

¹¹ *Id.* at 22948. The Wireline Competition Bureau was previously known as the Common Carrier Bureau.

¹² *Id.* at 22948-49.

5. Twelfth Report and Order. On June 30, 2000, the Commission released the *Twelfth Report and Order* which, among other things, set forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation.¹³ Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an "affirmative statement" from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction.¹⁴ The Commission defined an "affirmative statement" as "any duly authorized letter, comment, or state commission order indicating that [the state commission] lacks jurisdiction to perform the designation over a particular carrier."¹⁵ The requirement to provide an "affirmative statement" ensures that the state commission has had "a specific opportunity to address and resolve issues involving a state commission's authority under state law to regulate certain carriers or classes of carriers."¹⁶

6. Corr Petition. On April 29, 2002, Corr filed with this Commission a petition pursuant to section 214(e)(6) seeking designation as an ETC throughout its licensed service area in the state of Alabama.¹⁷ Corr contends that the Alabama Commission has issued an "affirmative statement" that the Alabama Commission does not have jurisdiction to designate a CMRS carrier as an ETC. Accordingly, Corr asks the Commission to exercise jurisdiction and designate Corr as an ETC pursuant to section 214(e)(6).¹⁸ Corr also maintains that it satisfies the statutory and regulatory prerequisites for ETC designation, and that designating Corr as an ETC will serve the public interest.¹⁹

III. DISCUSSION

7. We find, as discussed in more detail below, that Corr has met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for the provision of service in Alabama. We conclude that Corr has demonstrated that the Alabama Commission lacks the jurisdiction to perform the designation, and that the Commission therefore may consider Corr's petition under section 214(e)(6). We also conclude that Corr has demonstrated that it now offers and advertises, or will offer and advertise, the services supported by the federal universal service support mechanisms throughout the designated service areas upon designation as an ETC. Furthermore, we find that the designation of Corr as an ETC serves the public interest because it will benefit consumers in Alabama by promoting competition, new

¹³ See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

¹⁴ *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

¹⁵ *Twelfth Report and Order*, 15 FCC Rcd at 12264, para. 113.

¹⁶ *Id.* (citations omitted).

¹⁷ See generally Corr Petition. On May 15, 2002, the Wireline Competition Bureau released a Public Notice seeking comment on the Corr Petition. See *Wireline Competition Bureau Seeks Comment on Corr Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in Certain Non-Rural Service Areas in the State of Alabama*, CC Docket No. 96-45, Public Notice, 17 FCC Rcd 8775 (2002). Cellular Telecommunications & Internet Association (CTIA) submitted comments in response to the Public Notice. See Comments of The Cellular Telecommunications & Internet Association, CC Docket No. 96-45 (filed May 24, 2002).

¹⁸ See Corr Petition at 3.

¹⁹ See Corr Petition at 3-4, 7, Exhibit 1.

technologies. and universal service to those consumers. Pursuant to our authority under section 214(e)(6), we therefore designate Corr as an ETC in Alabama.

A. Commission Authority to Perform the ETC Designation

8. We find that Corr has demonstrated that the Alabama Commission lacks the jurisdiction to perform the requested ETC designation and that the Commission therefore has authority to consider Corr's petition under section 214(e)(6) of the Act. Corr submitted as an "affirmative statement" an order issued by the Alabama Commission addressing a petition filed by several CMRS carriers seeking ETC designation, or, in the alternative, clarification regarding the jurisdiction of the Alabama Commission to grant ETC status to wireless carriers.²⁰ In the Alabama Commission Order, the Alabama Commission concluded that it "has no authority to regulate. *in any respect*, cellular services, broadband personal communications services, and commercial mobile radio services in Alabama." The Alabama Commission advised the petitioners and "all other wireless providers seeking ETC status [to] pursue their ETC designation request with the FCC as provided by 47 U.S.C. § 214(e)(6)."²² The Alabama Commission's decision in the Alabama Commission Order is consistent with the Code of Alabama and a March 2000 declaratory ruling issued by the Alabama Commission.²³

B. Offering and Advertising the Supported Services

9. Offering the Services Designated for Support. We find that Corr has demonstrated that it now offers, or will offer, the services supported by the federal universal service support mechanisms upon designation as an ETC. Corr is a CMRS carrier serving, in accordance with licenses granted by the Commission, wireless service territories that include Alabama 1 – Franklin, for cellular services, and BTA108 (Decatur), BTA158 (Gadsen), BTA198 (Huntsville), and BTA017 (Anniston), for personal communications services.²⁴ Corr certifies that it currently provides all of the services and functionalities pursuant to section 254(c) of the Act throughout its service areas in Alabama." Corr states that it has the capability to offer, in accordance with section 54.101(a) of the rules, voice-grade access to the public switched network, local usage, the functional equivalent of DTMF signaling, single-party service, access to emergency service, access to operator services, access to interexchange service, access to

²⁰ See Corr Petition, Exhibit 2 (Alabama Public Service Commission, *Pine Bell Cellular, Inc. and Pine Bell PCS, Inc.*, Order, Docket No. U-4400 at 1-3 (March 12, 2000) (Alabama Commission Order).

²¹ Alabama Commission Order at 2 (emphasis in original)

²² *Id.*

²³ *Id.* See generally Alabama Public Service Commission, *Bell South Mobility, Inc. Petition for Declaratory Ruling*, Order, Docket No. 26414 (March 2, 2000) (Alabama Declaratory Ruling). The Alabama Code definition of "cellular telecommunications services" includes all cellular services, broadband personal communications services and CMRS. *Id.* at 2. See also Ala. Code § 40-21-120(1)a (2002). The Alabama Code definition of "cellular telecommunications provider" includes all licensees of the Federal Communications Commission to provide cellular telecommunication services, broadband personal communications services, CMRS, and all resellers of such services. See Alabama Declaratory Ruling at 2. See also Ala. Code § 40-21-120(1)b (2002).

²⁴ See Corr Petition at 2

²⁵ See *id.* at 4-6, Exhibit J

directory assistance, and toll limitation for qualifying low-income consumers.²⁶ Corr indicates that, upon designation as an ETC, it will make available a universal service offering that includes all of the supported services.” Corr states that it complies with applicable law and Commission directives on providing access to emergency services.²⁸ In addition, although the Commission has not set a minimum local usage requirement, Corr certifies that it currently offers several service options including varying amounts of local usage, and intends to offer its universal service customers a rate plan that includes unlimited local usage.²⁹ Finally, Corr commits to provide service to any requesting customer within the designated service area.³⁰ We therefore conclude that Corr complies with the requirement of section 214(e)(1)(A) to offer the services that are supported by the federal universal service support mechanisms under section 254(c).³¹

10. Offering the Supported Services Using a Carrier’s Own Facilities. We conclude that Corr has demonstrated that it satisfies the requirement of section 214(e)(1)(A) to offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier’s services.” Corr states that it provides the supported services “using [its] existing network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network.”³³ We find this certification sufficient to satisfy the requirements of section 214(e)(1)(A).

11. Advertising the Supported Services. We conclude that Corr has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor, using media of general distribution.³⁴ Corr certifies that it will advertise the availability of its universal service offerings, and the charges therefor, using media of general distribution.³⁵ Corr currently advertises its wireless services through various media, including television, radio, newspaper, and billboard advertising.³⁶ Corr states that it will expand upon these media, as necessary, to ensure that customers within its designated service area are fully informed of its universal service offerings.³⁷ We find this certification sufficient to satisfy

²⁶ See Corr Petition at 4-6

²⁷ *Id.* at 4.

²⁸ See 47 C.F.R. § 54.101(a)(5) (stating that access to emergency services includes access to 911 and enhanced 911 to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems). Corr currently provides access to emergency services throughout its cellular service area by dialing 911. See Corr Petition at 5. Corr indicates that it has completed Phase I E911 implementation in all jurisdictions that have requested it (three of the seven counties it serves). See *id.* Corr currently has a Phase II waiver request pending with the Commission. See *id.*

²⁹ See Corr Petition at 4.

³⁰ See *id.* Exhibit I

³¹ 47 U.S.C. § 214(e)(1)(A).

³² See Corr Petition at 6.

³³ Corr Petition at 6, Exhibit I

³⁴ See 47 U.S.C. § 214(e)(1)(B).

³⁵ See Corr Petition at 7.

³⁶ See *id.*

³⁷ See *id.*

the requirements of section 214(e)(1)(B). Moreover, because ETCs receive universal service support only to the extent that they serve customers, we believe that strong economic incentives exist, in addition to the statutory obligation, to advertise the universal service offerings in Alabama.³⁸

C. Public Interest Analysis

12. We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Corr as an ETC in the requested non-rural service area that is served by BellSouth.³⁹ As the Commission has previously stated, for those areas served by non-rural telephone companies, the designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest.⁴⁰ An important goal of the Act is to open local telecommunications markets to competition, and Congress recognized that the promotion of competition is consistent with the public interest in those areas served by non-rural telephone companies.⁴¹ Additionally, we note that no parties filed oppositions to the Corr Petition. We conclude that Corr has demonstrated that its designation as an ETC will fulfill the underlying federal policies favoring competition.

D. Designated Service Area

13. Consistent with Corr's request, we designate Corr as an ETC for the requested service area in Alabama.⁴² This service area encompasses the current service area of BellSouth as indicated in Appendix A.

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

14. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.⁴³ This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.⁴⁴ Corr has provided a certification consistent

³⁸ See *id.* (asserting that Corr will have economic incentives to advertise).

³⁹ 47 U.S.C. § 214(e)(6).

⁴⁰ See, e.g., *Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, 15 FCC Rcd 39 (Com. Car. Bur. 2000).

⁴¹ See 47 U.S.C. § 214(e)(6).

⁴² See Corr Petition at 1-2, Exhibit 3. Under section 214(e)(5) of the Act, "service area" connotes a geographic area established by a state commission, or the Commission under section 214(e)(6), for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5).

⁴³ See 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

⁴⁴ Section 1.2002(b) provides that a certification pursuant to that section shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors,

(continued....)

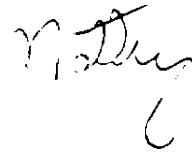
with the requirements of the Anti-Drug Abuse Act of 1988.⁴⁵ We find that Corr has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, Corr Wireless Communications, LLC IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for the designated service area in Alabama, as discussed herein.

16. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Wireline Competition Bureau to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

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or persons holding 5% or more of the outstanding stock or shares (voting and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

⁴⁵ See Corr Petition, Exhibit I

APPENDIX A

**ALABAMA NON-RURAL WIRE CENTERS FOR INCLUSION IN
CORR'S ETC SERVICE AREA**

BellSouth

Blount
Cullman
Etowah
Limestone
Madison
Marshall
Morpan